

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 201908996	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/22/2019 1:50 PM	Location of Incident: Broadway and Murray Street	Precinct: 01	18 Mo. SOL 3/22/2021	EO SOL 11/6/2021	
Date/Time CV Reported Tue, 10/15/2019 8:43 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 10/15/2019 8:43 AM		
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>			
<b>Witness(es)</b>	<b>Home Address</b>				
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>		
1. POM David Barker	13845	926545	INT UOU		
<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>		
1. Officers					
<b>Officer(s)</b>	<b>Allegation</b>			<b>Investigator Recommendation</b>	
A.POM David Barker	Abuse: Police Officer David Barker stopped § 87(2)(b)				
B.POM David Barker	Abuse: Police Officer David Barker failed to provide § 87(2)(b) with a business card				

## Case Summary

On October 15, 2019, § 87(2)(b) filed this complaint with the CCRB via its website (Board Review 01).

On September 22, 2019, § 87(2)(b) attended the Rally Against Antisemitism on the sidewalk on Broadway and Murray Street outside of City Hall in Manhattan. After the rally ended, § 87(2)(b) paced back and forth on Broadway between Park Place and Murray Street for approximately ten minutes. At approximately 1:50 p.m., Police Officer David Barker of the Intelligence Bureau Uniformed Operations Unit allegedly stopped § 87(2)(b) (**Allegation A – Abuse of Authority: Stop,** § 87(2)(g)). A rally organizer, § 87(2)(b) approached and said he knew § 87(2)(b) at which point Police Officer Barker let § 87(2)(b) go. § 87(2)(b) then approached Police Officer Barker and allegedly requested his business card, and Police Officer Barker allegedly replied that he did not have any business cards (**Allegation B – Abuse of Authority: Failure to Provide RTKA Card,** § 87(2)(g)). § 87(2)(b) was not summonsed or arrested.

No video footage of this incident was found by the investigation.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer David Barker stopped § 87(2)(b).**

**Allegation (B) Abuse of Authority: Police Officer David Barker failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) provided a telephone statement on October 22, 2019 (Board Review 02), and he was interviewed at the CCRB on November 4, 2019 (Board Review 03). § 87(2)(b) provided a telephone statement on November 29, 2019 (Board Review 04). Police Officer Barker was interviewed on December 17, 2019 (Board Review 05).

The following facts are undisputed: After the Rally Against Antisemitism ended, § 87(2)(b) and other attendees lingered at the scene, and § 87(2)(b) paced back and forth while looking at his cell phone without speaking to anyone. Police Officer Barker approached § 87(2)(b) and asked him what he was doing there, and § 87(2)(b) replied that he attended the rally. Police Officer Barker asked § 87(2)(b) for his identification, which § 87(2)(b) refused to provide. § 87(2)(b) intervened and said he knew § 87(2)(b). Police Officer Barker did not provide § 87(2)(b) with a business card.

§ 87(2)(b) stated that after Police Officer Barker asked him what he was doing there, Police Officer Barker directed him to move towards a gated entrance to City Hall, and § 87(2)(b) complied, at which point he was surrounded by Police Officer Barker and approximately three to four unidentified officers. Police Officer Barker then repeatedly said, “Give me your ID.” § 87(2)(b) did not believe he was free to leave before § 87(2)(b) intervened. After the officers walked away, § 87(2)(b) approached Police Officer Barker and requested his business card, and Police Officer Barker said he did not have any

business cards and did not write down his information for § 87(2)(b)

§ 87(2)(b) stated that he saw § 87(2)(b) interacting with Police Officer Barker and one unidentified officer by the gated entrance to City Hall, but he did not see how the interaction between them began. § 87(2)(b) did not believe § 87(2)(b) was surrounded by more than two officers at any point. § 87(2)(b) saw § 87(2)(b) approach Police Officer Barker after the officers walked away, but he noted that he was unable to hear their conversation.

Police Officer Barker stated that in addition to § 87(2)(b) pacing back and forth, he saw § 87(2)(b) with his hands balled in his pockets. § 87(2)(b)'s behavior drew Police Officer Barker's attention because his body language differed from the body language of the other rally attendees. (He noted that this is one thing he is trained to look for when monitoring crowds.) Police Officer Barker stated that he interacted with § 87(2)(b) by a newsstand close to the curb. He denied moving § 87(2)(b) anywhere during their conversation, either physically or by directing him. Police Officer Barker stated that he was alone when he spoke to § 87(2)(b) and that § 87(2)(b) was never surrounded or encircled by a group of officers. Police Officer Barker asked § 87(2)(b) what he was doing at the scene, if he knew anyone in the crowd, if he was alright, and if he had identification. § 87(2)(b) began raising his voice, took out his identification, and showed it to Police Officer Barker but did not hand it to him. Police Officer Barker denied that § 87(2)(b) requested his business card. Police Officer Barker believed he had no obligation to give § 87(2)(b) a business card because they only "had a conversation." He stated that § 87(2)(b) was free to leave during their interaction.

Patrol Guide Procedure 212-11 (Board Review 06) defines a request for information (Level 1 encounter) as "an encounter between a civilian and a uniformed member of the service conducted for the purpose of requesting information from the civilian. The uniformed member of the service must have an objective credible reason to approach the civilian... A police officer may seek information related to the reason(s) the person was approached, such as the person's name, address, and destination... The officer may not ask accusatory questions. The person may refuse to answer questions and/or walk or even run away... At this level, the officer... may not create a situation (either by words or actions) where a reasonable person would not feel free to leave."

Patrol Guide Procedure 212-11 (Board Review 06) defines a "Terry Stop" (Level 3 encounter) as "any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away... A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor."

Absent exigent circumstances, Patrol Guide Procedure 203-09 (Board Review 06) requires officers to offer a Right to Know business card upon the conclusion of law enforcement activities, which include noncustodial questioning of individuals suspected of criminal activity (Level 2 encounter), stops where an officer has reasonable suspicion that criminality is afoot (Level 3 encounter), frisks, searches of persons or property, or

roadblock or checkpoint stops.

§ 87(2)(b) stated that Police Officer Barker repeatedly said, “Give me your ID,” after he was placed against a gate and surrounded by approximately four to five officers, and that he did not believe he was free to leave before § 87(2)(b) intervened on his behalf. Police Officer Barker stated that he was alone when he interacted with § 87(2)(b) by the newsstand, and that § 87(2)(b) was free to leave, was not surrounded by officers, and was not directed to move towards the gate. § 87(2)(b) stated that he saw § 87(2)(b) interacting with two officers by the gate, and he did not know how the interaction between § 87(2)(b) and Police Officer Barker began. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Police Officer Barker denied that § 87(2)(b) requested his business card, and he believed he had no obligation to give § 87(2)(b) a business card because they only “had a conversation.” As discussed, § 87(2)(b) alleged that Police Officer Barker stopped him (Level 3 encounter), while Police Officer Barker denied stopping § 87(2)(b) and stated that he asked § 87(2)(b) what he was doing at the scene, if he knew anyone in the crowd, if he was alright, and if he had identification (Level 1 encounter). Patrol Guide Procedure 203-09 requires officers to offer business cards in Level 3 encounters, but not in Level 1 encounters. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 07).
- Police Officer David Barker has been a member-of-service for 19 years and has been a subject in 12 other CCRB complaints and 35 other allegations, of which seven were substantiated.
  - 200611831 involved substantiated Frisk, Property Damaged, Stop/Question, Refusal to Provide Name/Shield Number, Search of Person, Vehicle Search, and Discourteous Word allegations. The Board recommended charges, and the NYPD imposed discipline of a loss of five vacation days.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.

- As of January 2, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 08).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad No.: 02

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date